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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/470,386	12/22/1999	ROGER P. GENSKE	24180-667000	6075

7590 11/05/2002

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EXAMINER

JACKSON, MONIQUE R

ART UNIT

PAPER NUMBER

1773

18

DATE MAILED: 11/05/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application N .	Applicant(s)
	09/470,386	GENSKE ET AL.
	Examiner Monique R Jackson	Art Unit 1773

-- The MAILING DATE of this communication appears in the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 23 August 2002.

2a) This action is FINAL.                    2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1-12, 14, 18-29 and 32 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 1-12, 14, 18-29 and 32 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11) The proposed drawing correction filed on \_\_\_\_\_ is: a) approved b) disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12) The oath or declaration is objected to by the Examiner.

#### Priority under 35 U.S.C. §§ 119 and 120

13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some \* c) None of:

1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) The translation of the foreign language provisional application has been received.

15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

#### Attachment(s)

1) <input type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____	6) <input type="checkbox"/> Other: _____

### **DETAILED ACTION**

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 8/23/02 has been entered.
2. The amendment filed 8/23/02 has been entered. Claims 13, 15-17, 30-31, 33 and 34 have been canceled. Claims 1-12, 14, 18-29 and 32 are pending in the application.
3. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

#### ***Claim Rejections - 35 USC § 112***

4. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.
5. Claims 1-12, 14, 18-23, and 26-29 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Claims 1 and 23 recite the limitation "comprising a blend of low density polyethylene and a polyethylene plastomer wherein said blend has a density range from about 0.89 g/cc to 0.93 g/cc". However, the original disclosure at the time of filing does not support this limitation. With regards to a blend utilizing a plastomer, the original disclosure at the time of filing never discloses that the blend has a

density from about 0.89 to 0.93 and only described a blend comprising LDPE with a density of 0.921 and a plastomer with a density of 0.911 wherein the blend may comprise additives.

6. Claim 32 is rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Claim 32 recites a specific multilayer film structure with particular amounts of polyethylene in each layer comprising polyethylene and colorant, wherein the claim has been amended to read that the first layer of the film structure is laminated to a film selected from a Markush group of film materials. However, the specification only appears to support this specific multilayer film structure in combination with a PET film as in Examples 1-2 and does not appear to provide support for the other film materials listed in the Markush group in combination with this specific film structure.

***Claim Rejections - 35 USC § 103***

7. Claims 24-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over DiPoto for the reasons recited in paragraph 6 of Paper No. 11. As previously discussed, DiPoto offers several possible structures and layer compositions, however, it is within the scope of the invention taught by DiPoto to fabricate an oriented multilayer laminated packaging film with four or more layers comprising a heat sealant layer of LDPE which by definition has a density of that would fall within 0.89 to 0.93 g/cc, two intermediate layers of HDPE which by definition has a density that would fall within 0.93 to 0.97 g/cc and may comprise trim or excess from the entire film, and a barrier or support layer comprising polyester, nylon, or polypropylene whereby the barrier layer is coated with a barrier resin which would constitute a third intermediate layer.

Therefore, it would have been obvious to one having ordinary skill in the art to select from the materials taught by DiPoto and to optimize the layer combinations to produce a multilayer film for a desired end use.

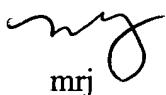
***Response to Arguments***

8. Applicant's arguments filed 8/23/02 have been fully considered but they are not persuasive and/or moot in view of the new ground(s) of rejection. In terms of the Applicant's arguments regarding DiPoto, it is noted that the features upon which applicant relies (i.e., a blend of low density polyethylene and a polyethylene plastomer) are not recited in the rejected claim(s) above. Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Monique R Jackson whose telephone number is 703-308-0428. The examiner can normally be reached on Mondays-Thursdays, 8:00AM-4:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Paul J Thibodeau can be reached on 703-308-2367. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9310 for regular communications and 703-872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.

  
mrj  
November 4, 2002